

Message

From: Monell, Carol [Monell.Carol@epa.gov]
Sent: 2/1/2019 2:39:22 PM
To: Johnson, Barnes [Johnson.Barnes@epa.gov]; Sasseville, Sonya [Sasseville.Sonya@epa.gov]; ORCR IO [ORCR_IO@epa.gov]
CC: Hansen, Susan [Hansen.Susan@epa.gov]
Subject: FW: Case re operator liability under RCRA
Attachments: WASCO v DENR - COA16-414-1.pdf

Importance: High

Barnes – we talked to NC yesterday – both their program and legal office managers who’ve been working the WASCO case for a number of years. I’m attaching just for reference the April 2017 court decision that lays out the court’s position. Our deputy regional counsel (Suzanne Rubini) was on the phone as well and all of us were convinced that what NC is doing is not inconsistent with federal RCRA regulations. Susan Hansen and Keriema Newman pulled out some interesting points from the document (see below).

I have to leave for a doctor’s appointment, but I’ll call you this afternoon to discuss the NC call in more detail.

Carol

From: Hansen, Susan
Sent: Thursday, January 31, 2019 3:09 PM
To: Rubini, Suzanne <Rubini.Suzanne@epa.gov>; Monell, Carol <Monell.Carol@epa.gov>; Michuda, Colleen E. <Michuda.Colleen@epa.gov>; Newman, Keriema <Newman.Keriema@epa.gov>; Lamberth, Larry <Lamberth.Larry@epa.gov>
Subject: FW: Case re operator liability under RCRA
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Page 13, #24 from court of appeals decision to affirm:

“24. Rodney Huerter—who had assumed the role of WASCO’s Director of Environmental Affairs after Mr. Coyne—signed a third Part A permit application “under penalty of law” in 2008, which was submitted to the Section and which again identified WASCO as the Facility’s operator.”

From: Newman, Keriema
Sent: Wednesday, January 30, 2019 5:01 PM
To: Michuda, Colleen E. <Michuda.Colleen@epa.gov>
Subject: FW: Case re operator liability under RCRA
Importance: High

Colleen

I had been reading this document during this call. The doc seems to lay out the arguments that NCDEQ used and the court supported. Their arguments are primarily on the following:

- WASCO’s signature as an operator on several Part A applications

- NC's interpretation as an owner or operator being an entity that provides funds for closure or post-closure care or directs post-closure care activities (negating WASCO's position that owners or operators at the facility are only entities before the time that the facility ceases to operate).
- Proof of WASCO providing financial assurance through a LOC
- WASCO acquired Culligan, Culligan had been performing post-closure operations related to the Facility and FA.
- WASCO assumed environmental liability of the facility even after Culligan was divested

I highlighted my version of the adobe doc, let me know if you want me to forward it to you.

From: Michuda, Colleen E.

Sent: Friday, June 9, 2017 11:14 AM

To: Redleaf-Durbin, Joan <Redleaf-Durbin.Joan@epa.gov>; Benjamin, Deborah <Benjamin.Deborah@epa.gov>; Hansen, Susan <Hansen.Susan@epa.gov>; Pratt, Marirose <Pratt.Marirose@epa.gov>; Lodin, Marianne <Lodin.Marianne@epa.gov>; Smith, Stephen <Smith.Stephen@epa.gov>; Binford, Marshall <Binford.Marshall@epa.gov>; Luetscher, Greg <Luetscher.Greg@epa.gov>; Mann, Teresa <Mann.Teresa@epa.gov>; Buso, Roberto X <Buso.Roberto@epa.gov>

Subject: Case re operator liability under RCRA

ATTORNEY-CLIENT PRIVILEGED

Hi all. I thought this case might be of interest to you. For those of you who do permitting work, we often take the position that the entity in charge of the corrective action/cleanup work under a RCRA permit is the "operator." This is true even if that entity is no longer a current owner or is no longer conducting ongoing operations at the facility (meaning, the only thing the entity is doing is cleanup). This case affirms this position. In this case, WASCO was held liable as an operator of a landfill for purposes of post-closure care because it had contractually agreed to take on this liability, was performing the cleanup, paying the contractors, and providing the FA. WASCO has petitioned for review to the NC Supreme Court, so we'll see what happens.

Interestingly, WASCO is arguing in its petition that this case has major precedential value and implications in the state. NC has said in its response to WASCO's petition that the case would *not* have widespread implications because the decision that WASCO is an operator was extremely fact-specific. In my opinion, although the facts are always important, this case is very significant in that it affirms operator liability for an entity conducting a cleanup (without any other current connection to the facility).

Let me know if you want to see the Petition for Review and DEQ's response.

--Colleen

Colleen E. Michuda

Senior Attorney

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